

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.871 of 2017

and

C.M.P.Nos.12167 and 15732 of 2017

S.R.Senthilkumar ... Appellant/4th Respondent

.. Vs ..

1. Dr.M.Sudhakar
Deputy Commissioner of Police,
Anna Nagar,
B-26, Tower Block, Taylors Road,
Kilpauk, Chennai - 10. ... Respondent/Writ Petitioner
2. State of Tamil Nadu,
Rep. by the Secretary,
Home Department,
Fort St. George,
Chennai - 600 009.
3. The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.
4. The Secretary,
Tamil Nadu Public Service Commission,

Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai - 600 003.

5. R.Ramakrishnan,
Deputy Commissioner of Police,
Crime & Traffic (Salem City),
249, Cherry Road,
Salem - 636 007.
6. The Public and Administrative Reforms Department,
Rep. by its Secretary to Government,
Fort St. George,
Chennai - 600 009. ... Respondents/Respondents

[R-6 impleaded vide order of this Court
dated 20.09.2017 made in CMP
No.15639 of 2017]

Prayer: Writ Appeal filed under Clause 15 of The Letters Patent Act,
against the order dated 22.06.2017 passed by this Court in
W.P.No.11294 of 2017.

सत्यमेव जयते

For Appellant	:	Mrs.Selvi George
For R-1	:	Mr.R.Singaravelan, Senior Counsel for Mr.M.Senthilkumar
For RR-2, 3 & 6	:	Mr.K.Venkatramani, AAG Assisted by Mr.R.Prathapkumar, AGP
For R-4	:	Mrs.C.N.G.Niraimathi
For R-5	:	Mr.K.M.Ramesh

JUDGMENT

**(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)**

Heard the learned counsel for the parties for some time and Mr.K.Venkatramani, learned Additional Advocate General, who takes notice on behalf of the newly impleaded sixth respondent herein.

2. The writ petition has been filed by the first respondent herein praying for issuance of a Writ of Mandamus directing the second respondent herein to re-fix the seniority by placing the writ petitioner at a higher position above the appellant herein and the fifth respondent herein on the basis of marks obtained by the writ petitioner in the qualifying examination in respect of appointments made to the post of Deputy Superintendent of Police, Category I in the Tamil Nadu Police Service 1998-99.

3. It appears that the writ petitioner had submitted before the learned Single Judge that the candidate at Sl.No.1 had not joined duty and as a consequence, the petitioner's seniority could be re-fixed.

4. The learned Single Judge, after recording the submission of the learned Standing Counsel for the fourth respondent herein/Tamil Nadu Public Service Commission that the request made by the learned counsel for the writ petitioner will follow as a natural corollary, in which event, the writ petitioner's seniority position will be again re-fixed, disposed of the writ petition.

5. Now, the factum of non-joining of candidate at Sl.No.1 is disputed by the appellant and it is further contended by the learned counsel for the appellant that without giving any opportunity of hearing to the appellant, though he was arrayed as party in the writ petition, the writ petition was disposed of on the date of admission itself. It is further submitted by the learned counsel for the appellant that the selected candidates have joined the service as early as more than 20 years ago and at this distant point of time, the limitation period prescribed under the Tamil Nadu State and Subordinates Service Rules, now amended under the Tamil Nadu Government Servants (Conditions of Service) Act 2016 is exhausted and further submitted that the appellant herein was selected in 100th turn in the

order of Rotation-I while the writ petitioner was selected in the 12th turn in Rotation-II and was rightly fixed in 13th place and was brought to 9 since 4 persons did not join. Hence, the order passed by the learned Single Judge is liable to be set aside.

6. Mr.R.Singaravelan, learned Senior Counsel appearing for the first respondent/writ petitioner has submitted that the learned Single Judge has disposed of the writ petition only recording the submissions of the learned counsel appearing for the writ petitioner to the effect that the candidate at Serial No.1 had not joined and hence, the seniority could be re-fixed after ascertaining such factum and that of the submission of the learned Standing Counsel for the Tamil Nadu Public Service Commission to the effect that it would be considered by them and hence, it does not warrant any interference by this Court.

7. Ms.C.N.G.Niraimathi, learned Standing Counsel appearing for the fourth respondent/Tamil Nadu Public Service Commission has submitted that the factual position recorded by the learned Single Judge in para No.2 of the order is based upon the representation made across the bar and not based upon the information of the Tamil Nadu

Public Service Commission and she submitted that the candidate in Sl.No.1 has in fact has joined the service and further submitted that the writ petitioner has secured more marks, while the contesting respondent secured less marks. However, she would further submit that the candidates from open competition on the respective ranking have also to be considered.

8. Mr.K.Venkatramani, learned Additional Advocate General, who takes notice on behalf of respondents 2, 3 and 6, would submit that the publication of the seniority list and the revision of the seniority list as per the guidelines given by the Supreme Court, are all factual issues which have to be worked out before the appointing authority viz., second respondent, after giving notice to all the parties concerned.

9. It appears from the submissions of the learned counsel appearing for the parties and the materials placed before us that the present position of seniority is the outcome of the communal roster method followed in fixing the seniority and based on such method, the appellant and the fifth respondent have been placed above the first

respondent herein, as contended by the learned counsel appearing for the appellant.

10. Be that as it may, the fact remains that with regard to fixation of inter-se seniority among the candidates, the marks scored by them would be predominant and in view of the fact that such legal position has been considered and upheld by the Supreme Court time and again and that seniority has to be fixed on merit and not on quota basis.

11. In such view of the matter, it is for the contesting parties before this Court to give representations to the second respondent on the issue of re-fixation of seniority, within one month from the date of receipt of a copy of this judgment and on receipt of such representations, the second respondent shall deal with the representations subject to the erstwhile Rules under the Tamil Nadu State and Subordinates Service Rules, now amended under the Tamil Nadu Government Servants (Conditions of Service) Act 2016 and subject to period of limitation if any and also obtain views and remarks from the fourth respondent/Tamil Nadu Public Service

Commission before taking a decision on the same in accordance with law, within a period of two months thereafter. It is needless to say that if any of the parties is aggrieved even after the decision by the Government, it is open to such party to approach this Court afresh. The order passed by the learned Single Judge stands modified to this extent.

12. Accordingly, this Writ Appeal is disposed of. No costs. The connected miscellaneous petitions are closed.

[H.G.R.,J.] [T.K.R.,J.]
20.09.2017
(2/2)

Index : Yes
Internet: Yes
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Note:- Issue order copy on 11.10.2017

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1. The Secretary,
State of Tamil Nadu,
Home Department,
Fort St. George,
Chennai - 600 009.
2. The Director General of Police,
Post Box No.601,
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